

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

GEORGE ASHLEY, #1738867 §

VS. § CIVIL ACTION NO. 6:15cv1157

BRENNON SHAY §

ORDER OF DISMISSAL

Plaintiff George Ashley, an inmate confined at the Coffield Unit of the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. The cause of action was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Report and Recommendation concluding that Defendant Brennon Shay's motion to dismiss should be granted. Plaintiff has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Plaintiff to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Plaintiff's objections are without merit. Plaintiff complains that he was denied medical care when the back of his head was bleeding. The dispositive factor, however, is the lack of a serious medical need. An inmate may have a basis for a potentially meritorious civil rights lawsuit if officials were deliberately indifferent to a serious medical need, as opposed to any medical need. *Farmer v. Brennan*, 511 U.S. 825, 835 (1994). In his objections, Plaintiff focuses on deliberate indifference, but that is only part of the equation. He failed to allege facts showing that he experienced a serious medical need in order to trigger the

protection of the Eighth Amendment. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the Report and Recommendation (docket entry #19) is **ADOPTED**. It is further

ORDERED that Defendant Brennon Shay's motion to dismiss (docket entry #14) is **GRANTED** and the case is **DISMISSED** with prejudice. It is further

ORDERED that all motions not previously ruled on are **DENIED**.

Finally, Plaintiff is hereby informed that the decision dismissing this lawsuit counts as a strike for purposes of 28 U.S.C. § 1915(g). He is cautioned that once he accumulates three strikes, he may not proceed IFP either in any civil action or in any appeal of a civil action which is filed while he is incarcerated or detained in any facility, unless he is under imminent danger of serious physical injury.

It is SO ORDERED.

SIGNED this 4th day of May, 2016.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE